

DRAFT FILED: JUNE 1, 2009
FINAL APPROVAL: 12/15/09

VILLAGE OF CROTON-ON-HUDSON WATER CONTROL COMMISSION
MEETING MINUTES OF MAY 20, 2009.

MEMBERS PRESENT: Stuart Greenbaum, Chairman
 Mark Goldfarb
 Vita Rhodes
 Al Mazza
 Charles Kane

ABSENT: Liaison: Richard Olver

ALSO PRESENT: Alternate Liaison: Demetra Restuccia (Arrived 8:25)
 Daniel O'Connor, Village Engineer

The meeting came to order at 7:30 P.M.

Fallacaro

3 Arrowcrest Drive

67.15-1-33

Request to Planning Board for a Wetlands Activity Permit with respect to an existing retaining wall and other existing alterations.

Norman Sheer, Esq., Bank, Sheer, Seymour – 399 Knollwood Rd., White Plains, N.Y. – Represented the applicant.

Sheer – I am representing Mr. Fallacaro who has been referred by the Planning Board to the Water Control Commission who has jurisdiction with respect to the wetlands and water course. The Planning Board is responsible for the Site Plan Approval. This is not an application to build, but to legalize work that was done some time ago without the benefit of a permit.

Sheer – (Referred to Site Plan drawings) – This is the original Site Plan that was approved by the Planning Board. This is the drainage Site Plan for this lot. Outlined in pink is the Fallacaro property. From this point to the south (referring to plans) is the Conservation Easement. Outlined in yellow are the Water Control Commission boundaries and the blue is the water course that was supposed to be a drainage swale. The house was built inside the wetlands controlled area and the swale had been approved but was never built. This

was approved in 1998. What the builders did for reasons unknown, they tried to put a swale behind the house. The Fallacaro's thought that was the way it was to be. They had a watercourse from east to west and the watercourse went down to Old Post Road and down to the South end. Mr. Fallacaro then built a wall on the easterly side of the property and they also did some work that should have had a Wetlands Activity Permit. There was a problem where the water was going across the property and into an adjacent property (1295 Albany Post Rd.). He installed a pipe that went into a catch basin and then into a pipe that went to the upper tier of the wall. This is not a construction request. If you look at the requirements I think we would qualify. There is no environmental impact. If you look at the alternatives, it would involve digging, demolishing and disturbing much more than if we left it as is. There is no detriment to the health, safety, or welfare of the community. Just taking down the wall and pipes would be a significant danger to the properties below. There will be no disturbance. There are no other practical alternatives other than letting the water roll down as surface water and it would then create a sink hole.

Goldfarb – Where does the water flow to?

Sheer – Eventually it flows down to the Hudson River.

Discussion followed over plans.

Greenbaum – I saw some kind of pond below the property. What is the route of the pond? Where does it go? Does it go from your property to the Hudson River?

O'Connor – There is a detention pond on both sides of the road. His is on the right side and there is a pipe that goes under Albany Post Road and down stream from there is some sort of pipe/swale near Albany Post Road and then it is channeled and piped down toward the railroad and the Hudson River.

Greenbaum – How does it flow from the Fallacaro wall?

Fallacaro – It goes from the wall down to the end of property and the Rosso's Property (1295 Albany Post Rd.) have a manhole and it goes out under his driveway and it then goes out to the pond by the road.

Rhodes – The house that is below you. Is that part of Arrowcrest?

Fallacaro – No.

Rhodes - The property you mentioned (Rosso) is not part of Arrowcrest?

Fallacaro – Correct.

Rhodes – Does your water feed into that? Can you point to where the water comes out?

Discussion followed over plans.

Rhodes – What size is the outlet?

Fallacaro – 15 inches.

Sheer – Mr. Rosso has indicated that the situation has improved.

O'Connor – The Planning Board did ask for a drainage report with respect to how much water is coming from the swale and the Fallacaro property.

Rhodes – What year was the swimming pool built?

Sheer – The year 2000. The swimming pool had a building permit.

Kane – (To Dan O'Connor, Village Engineer) Have you received any complaints from the current or previous neighbors?.

O'Connor – Only from the Rosso's when Mr. Fallacaro originally did the work. I do not know if it was really a complaint. I remember it had to do; something with the basement and I had a conversation with someone; I am not sure if it was Mr. Fallacaro, about that occurring. There are other neighbors who can speak to that.

Sheer – I think it is important for the Board to know that there was litigation from the neighbors and the Fallacaro's with respect to the topping of trees on their property. In that case the neighbors included a cause of action including the wall. There was a settlement of \$125,000.00. So, I think when you hear the neighbors, it is our position, that they already have given up their claims with regard to the wall.

O'Connor – With respect to significant improvements that would be significant to the Wetland Permit, there is a waterfall type of structure. Was that part there?

Sheer – It is in the controlled area. On this map (referring to map) is the waterfall feature, that collects the water from the property above. The pool did not have a Wetlands Permit but, it had a Building Permit for the pool, according to the files. The pipe which runs east to west and the two catch basins and the pipe within the wall were all built within the wetland boundaries.

O'Connor – There was a Wetland Permit issued for the entire sub-division and other areas within the boundaries of the subdivision were also included. It was a little cumbersome as to how it was handled with respect to the Village Code with respect to what was covered under the Village Code and the time frame of the sub-division and when the work was done. The sub-division was covered by a Wetlands Permit.

Sheer – The Arrowcrest sub-division was worked out after litigation with the village. It was worked out so there were 35 Lots. There was only so many ways you could work out the location of a house on these thirty five lots. There were also steep slope regulations and the Wetland Regulations, which were new to the village at that time. I was the Planning Board Chairman at the time and we were new to the new Wetlands Regulations as in most communities in the area.

Rhodes – You say the Wetlands Regulations did not come into affect until when?

Sheer – 1987 or 1988.

O'Connor – When the house was purchased the stream flow came down hill into the back area of the house and it went into a swale.

Sheer – The water went all over the place.

O'Connor -and it was just flowing down hill. So, the improvements were made into the buffer zone and were placed without a permit. All the construction is done already.

Fallacaro – With the water feature I just added a little more stone in the façade and it is catching water at the bottom.

Greenbaum (To Village Engineer) Does the Village feel that whatever has been done is complete?

O'Connor – The application is now with the Water Control Commission for your review and recommendations and it will then be passed back to the Planning Board for their approval. One item the Planning Board would like is for the drainage issues to be completed and to know the basins and pipes that were installed can handle the flow from the property down to the water shed. That is all the typical items that would normally be addressed by the Water Control Commission and the Planning Board.

O'Connor – (To Mr. Fallacaro) Does it handle the flow? Do you have any problems with leaves or brush, etc. collecting into the system?

Fallacaro – The top tier retains the surface water and the lowest pipe is for the bigger drain that handles the stream that flows through the property. The upper one very rarely has water coming out of it.

O'Connor – The pipe that comes out of the lower part of the wall.....

Fallacaro -....it is approximately ten feet and then it directs to the Rosso's property and into the pit. We also put rip rap.

Goldfarb – Asked Mr. Sheer what Section of the Complaint did he refer to with respect to the Cause of Action for the lawsuit?

Discussion followed over lawsuit decision.

Goldfarb – After reviewing a certain section of the legal document with respect the legal complaint and cause of action taken, Mr. Goldfarb asked: “Are you in essence saying the water pipe is part of the wall?

Sheer – It sure is.

Greenbaum - Any other questions?

Donna Candido & Edward Bezursik, 1299 Albany Post Road, were present at the meeting.

Donna Candido – Our lot is the lot that is located down hill adjoining the side yard where this stone wall is located. We are not represented by council because we did not receive the notice. It was sent to the wrong address and probably for the same reason we did not receive the notice for the Planning Board. We appreciate the Water Control Commission hearing our comments. I pulled up the Planning Board Minutes and in those minutes Mr. Sheer made comments. We believe some points have been misrepresented. We did bring a lawsuit to the applicant and Goldens Tree Service for damages due to the topping of trees on our property and we also requested the court to make a finding as to whether the wall violated the setback and height requirements. Both defendants settled from permanent damages for the topping of trees and the releases still need to be signed, due to the law firm, going out of business. To the contrary of what Mr. Sheer stated, our lawsuit did not address the same issues that are before the village. Nor, did the court order relating to the release, prevent us to voice our concerns, with respect to the esthetics and safety of the wall. Mr. Fallacaro's litigation council conceded we have the right to do this.

Goldfarb – When did Mr. Fallacaro's council make that consensus?

Candido – Referred to a letter dated May 13, 2008 (which was not submitted for the record).

Candido – In the lawsuit (referred to in the May 13, 2008 letter) we were not trying all of these issues that are before the WCC now. We were trying Mr. Fallacaro and Golden's Tree Service with respect to the cutting/topping of trees that were located on our property (Ms. Candido - Referred to drawings she had brought to the meeting) The issue was with respect to where the property line was and where the wall was, compared to where the trees were located. The stone wall was built right on our property line. The judgment was relevant to the understanding, as to where the location of the trees were, that is what the judgment was about. It was not about the damage of the wall. I would appreciate it if his lies do not mislead this Board with respect to that.

Ms. Candido – Referred the Board to page 4 of the judgment and stated that the case that was before the court at that time was a declaratory judgment. In fact when we went back to the court and discussed it with the attorney's with respect to the language in the release and how it was to be worded she said, it was only to be tied to the language to this order and nothing more broad than that. The court could not have done anything more with respect to the setback and the height of the wall.

Goldfarb – So, really your declaratory judgment and money damages are over. The question is to what extent are they over? I assume you and your husband are before us with respect to the water flow and the pipe?

Candido – I just want you to know this is separate and apart to the damages caused to our land and the judgment. This wall was built without us. We did not settle this case with respect to the integrity of the wall. That judgment was not a claim to that. It was with respect to the setback and height of that wall.

Goldfarb – Referred to a portion of paragraph 15 of the complaint, which states”Plaintiffs immediately contacted the Fallacaro Defendants regarding Plaintiffs’ concerns about the placement, height, integrity, and safety of the stone retaining wall and embankment, as well as their concerns about drainage and whether the walls complied with the Village of Croton-on-Hudson Zoning Code”. So, is that issue not covered by the same settlement? I understand the government has a different issue than you do.

Candido – When we went to talk to Mr. Fallacaro with respect to the trees, it ended up being a conversation with respect to the placement of the wall. We only found out when we heard this noise happening. We did not really see anything happening at that point. I happen to be a member of the Homeowners Assoc. and I was in the capacity of President at the time. He was on my property and we were talking and I happened to look up and saw these boulders. That was the first I was aware of it and saw it. I had concerns because the embankment did not look like it had much credibility. We asked if he had the proper permits. My husband went to look to see where the stakes were and we found the stakes had been pulled up. Mr. Fallacaro assured us everything was being done according to the Village Regulations.

Greenbaum – This is not a legal hearing. The purpose for this meeting is as the engineer previously articulated; we need to make sure that the drainage report shows that the basins and pipe lines can handle the flow of water and the integrity of the wall is satisfied. So our issue with the public is if there will be an adverse impact. Those are the issues before us as well as what conditions we need to make with respect to requesting a drainage report and engineers report with respect to the integrity of the wall and that is it.

Candido – We fully realize that this is not a legal proceeding. We have full understanding that we have the right to address these issues. We are very concerned. The wall was built without an engineer and we live down hill from the wall and when we initially spoke to Mr. Fallacaro, there were issues with the wall that he was trying to address. This was all done without an engineer. So, if anything goes wrong with that, we have personal damage to property to be concerned about.

Ms. Candido – Displayed drawings (not submitted for the record) and discussion followed over the pictures.

Candido - (Referring to drawings) - This area is up on the cliff and if we are down here and the wall comes down, we are talking about substantial damage from that height. The water does go down to the retention ponds on our property. When there is substantial rains there is a lot of water. We have had to incur surveys. We cannot incur that cost to deal with the setbacks of the village. But, we need to be assured of public safety and that steps are being taken for safety measures. It does not take a lot of rain to fill and flood that area. Luckily, we have not yet had to deal with hurricanes to sustain that type of rain.

Greenbaum - It is our concern to impose and have certain conditions in place. We can discuss those issues and request to get engineers reports with respect to the integrity of the wall and we are going to have a drainage report as well. Those will be the conditions with respect to the permit. From my assessment this is already an existing situation and not much we can do. But, we will carefully consider these issues.

Norman Sheer – We had a previous report from Bernard Grossfield, a Structural Engineer from NY University. We have done the ground radar report on the structure and the Village Engineer, Dan O'Connor, is working on the calculations of the radar report. Mr. O'Connor has stated that he may or may not need outside help. With respect to Ms. Candido stating that she did not have time to acquire a lawyer, she is a lawyer. Therefore, she did not need to have her attorney present.

Sheer – We are due back at the Planning Board on July 12, 2009.

Greenbaum – The Village Engineer will then, hopefully, have all of the reports with respect to the walls integrity, etc. That's all that needs to be determined at this time.

Rhodes – Referred to the visual impact of the wall to the neighbors below and questioned whether there was an issue with respect to the amount of fill that was used and if we had a quantity of the amount of fill that was used.

Sheer – Ralph Mastromonico suggested there be points on the wall and laser shots taken to see whether or not the wall has moved. The Planning Board is thinking the same way and I think we can answer this.

Greenbaum – Anyone else like to be heard?

There was no reply.

The Board unanimously agreed to submit the following recommendations to the Planning Board:

The Water Control Commission recommends that a report be requested from a Licensed Engineer/Consultant in order to verify and insure the integrity of the existing retaining wall and to also insure that the existing drainage basins and pipes are able to handle the water flow that is channeled from the applicants property down to the water shed and into the Hudson River.

The Water Control Commission therefore refers the application back to the Planning Board for the necessary Planning Board Approvals.

Meeting Closed.

CORRESPONDENCE:

Vita Rhodes - Referred the Board to a notice she received with respect to a Summer Workshop entitled “Summer 2009 ELLA Workshop”: With respect to Wetland identification and Regulatory Process Overview for Environmental Leaders. It will be held on Saturday, June 20th, 2009 at 9:00 A.M. – 3:00 P.M. at Teatown Lake Reservation. A copy of the details will be forwarded to the WCC by the WCC Secretary.

Respectfully submitted,

Janice Fuentes
WCC Secretary
5/20/09